

1 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate
2 of appealability.

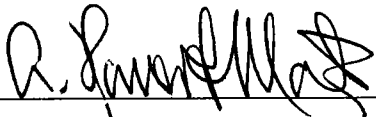
3 Accordingly, IT IS ORDERED THAT:

4 1. Judgment shall be entered dismissing the action with prejudice.

5 2. The Clerk shall serve copies of this Order and the Judgment herein on
6 the parties.

7 3. Petitioner's Application for Certificate of Appealability, [Docket No.
8 38], is denied.

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10 DATED: May 31, 2011

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12 _____
13 HON. A. HOWARD MATZ
14 UNITED STATES DISTRICT JUDGE
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Rider A

The alleged failure of defense counsel to call investigator Robitzer appears to be the result of counsel's failure to comply with California Penal Code § 1054.1. *See* pages 10-11 of the Report & Recommendation. (It probably was section 1054.3 that the trial court meant to refer to, for that is the section that imposes discovery duties on defense counsel.) In any event, a defense attorney's belated attempt to mitigate her failure to comply with discovery obligations cannot constitute a basis to find that the attorney's conduct was reasonable. However, in the context of this case, if counsel's failure to call Robitzer was error, it did not prejudice petitioner, given the plentiful evidence of guilt.

A. Howard M. J.
U.S. District Judge